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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,479	09/30/2003	Dhirendra Pandey	5681-71800	6011

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EXAMINER
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WAI, ERIC CHARLES

ART UNIT	PAPER NUMBER
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2195

MAIL DATE	DELIVERY MODE
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01/31/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/675,479

Applicant(s)

PANDEY ET AL.

Examiner

Eric C. Wai

Art Unit

2195

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: None.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-21.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
LEWIS A. BULLOCK, JR.  
PRIMARY EXAMINER

Continuation of 11. Other:

1. Regarding Applicant's arguments under Section 101 Rejection, even though Applicant has invoked the rebuttable presumption that 35 USC 112, 6th paragraph applies in the claim interpretation of the "means," corresponding "structure" in the disclosure is not automatically and inherently limited to hardware-inclusive embodiments. It is entirely possible for the corresponding disclosed "means" to cover an embodiment of software alone; e.g. a software program, subroutine, a set of instructions.
2. Use of the word "system" does not inherently mean that the claim is directed to a machine. Only if at least one of the claimed elements of the system is a physical part of a device can the system as claimed constitute part of a device or a combination of devices to be a machine within the meaning of 101. In addition the description of Fig 2 beginning at page 9 does not cure the problem since it states the system as other suitable devices. Virtual machines are software systems and can constitute the system.
3. Applicant argues on page 4:  
 "The above citations do not teach or suggest each client creating a plurality of client-side Object Request Brokers (ORBs), wherein each client-side ORB is" coupled to a server-side ORB of a different one of the plurality of application server instances. FIG. 3 of Gigliotti shows a plurality of "client objects" coupled to a plurality of "Server hosts", but does not show a plurality of client-side ORBs for each client object, wherein each client-side ORB for each client is coupled to a server-side ORB of a different one of the plurality of application server instances. In contrast, Gigliotti only teaches that each 'client object' may be an ORB. In the description of FIG. 3, beginning at col. 6, line 3, Gigliotti does not teach or suggest anything like each client creating a plurality of client-side Object Request Brokers (ORBs), wherein each client-side ORB is coupled to a server-side ORB of a different one of the plurality of application server instances."
4. Examiner disagrees. As indicated in the Response to Arguments section in Final Rejection dated 11/09/2007, Examiner asserts that Gigliotti's client and load balancer is equivalent to Applicant's client. Applicant's claim 1 recites "one or more client computer systems configured to implement one or more clients of the application server". This allows for more than one computer system to implement a single client.
5. Furthermore, Gigliotti teaches that each connection between hosts is connected using ORB (col 7 lines 57-60). Gigliotti also indicates that each of the server hosts is a separate host (col 5 lines 17-20). It is inherent that an ORB connection requires both a client-side and server-side ORB to handle the interpretation or conversion of communications since the client and server reside on different hosts. The figures of Gigliotti clearly teach the equated client having a plurality of connections to various servers. It is obvious that since each connection is an ORB connection and a client has a plurality of connections, that each client has a plurality of ORB connections, e.g. client ORBs.
6. Applicant argues on page 4:  
 "As noted above, Gigliotti only teaches that each 'client object' may be an ORB. Nowhere does Gigliotti teach or suggest what is actually recited in claim 1: each client is configured to create a plurality of client-side Object Request Brokers (ORBs), wherein each client-side ORB [created by the client] is coupled to a server-side ORB of a different one of the plurality of application server instances."
7. Examiner disagrees. As indicated above, Examiner asserts that Gigliotti's client and load balancer is equivalent to Applicant's client. It is inherent that Gigliotti's load balancer host creates the client-side ORBs for each ORB connection to the server-side, as outlined above. Therefore each client creates a plurality of client ORBs, via its plurality of connections.
8. Applicant argues on page 5:  
 "From the above and from Fig. 4 and the rest of the description thereof, it is clear that the load balancer described by Gigliotti resides on a host machine that is clearly distinct and different from and located separately from the "client objects" as illustrated in Fig. 3. Gigliotti does not teach or suggest, in reference to Fig. 3, Fig. 4, or elsewhere, anything like each client creating a plurality of client-side Object Request Brokers (ORBs), wherein each client-side ORB is coupled to a server-side ORB of a different one of the plurality of application server instances. In contrast, Gigliotti clearly teaches the notion of load balancers located on host machines which are clearly distinct from clients in Gigliotti's system."
9. Examiner disagrees. The cited portion of Gigliotti describes an exemplary embodiment. The teachings of Gigliotti are not limited to a single embodiment. While Figure 4 may indicate that the load balancer is located on a different machine than the client, Figure 3 clearly indicates that the load balancer belongs to the client-side. M.P.E.P. 2123 (II) Details disclosed examples and preferred embodiments do not constitute a teaching from a broader disclosure or non-preferred embodiments. Therefore Fig 4 cannot constitute a teaching away. Furthermore, the claim language recites "one or more client computer systems configured to implement one or more clients of the application server". This allows for more than one computer system to implement a single client. Applicant's argument that the load balancer is located on host machines is inapposite in view of the claim language.
10. Applicant argues on page 5:  
 "Furthermore, Gigliotti only describes a single ORB associated with each client object, and nowhere describes multiple ORBs for each client object, or that clients or client objects create a plurality of client side ORBs."
11. Examiner disagrees. As indicated in the Response to Arguments section in Final Rejection dated 11/09/2007, Examiner asserts that Gigliotti's client and load balancer is equivalent to Applicant's client. Applicant's claim 1 recites "one or more client computer systems configured to implement one or more clients of the application server". This allows for more than one computer system to implement a single client.
12. Furthermore, Gigliotti teaches that each connection between hosts is connected using ORB (col 7 lines 57-60). Gigliotti also indicates that each of the server hosts is a separate host (col 5 lines 17-20). It is inherent that an ORB connection requires both a client-side and server-side ORB to handle the interpretation or conversion of communications since the client and server reside on different hosts. The figures of Gigliotti clearly teach the equated client having a plurality of connections to various servers. It is obvious that since

each connection is an ORB connection and a client has a plurality of connections, that each client has a plurality of ORB connections, e.g. client ORBs.

13. Applicant argues on page 5:

"Furthermore, in describing the load balancing system, Gigliotti does not even teach the notion that each load balancer is configured to create a plurality of client-side Object Request Brokers (ORBs), wherein each client-side ORB is coupled to a server-side ORB of a different one of the plurality of application server instances. The Examiner's assertion that "Fig. 3 of Gigliotti clearly indicates multiple client computer systems connected to multiple load balancers with a plurality of client-side ORBs couple to a server-side ORB of a different one of the plurality of application server instances" and that Gigliotti therefore teaches the limitations as recited in claim 1 is clearly not supported by the Gigliotti reference."

14. Examiner disagrees and refers to the remarks above in answering the argument.

15. Applicant argues on page 6:

"In further regard to claim 1, contrary to the Examiner's assertion, Gigliotti does not teach or suggest wherein each client is" configured to select one of the plurality of client-side ORBs according to a load balancing scheme in response to a request to access the application server. The Examiner cites Gigliotti, col. 6, lines 37-39, in support of this assertion, and states "wherein a load balancer determines a balanced distribution". However, nowhere does Gigliotti teach or suggest each client selecting one of the plurality of client-side ORBs" according to a load balancing scheme in response to a request to access the application server. Nowhere does Gigliotti teach or suggest each client creating a plurality of client-side ORBs on a client system, and nowhere does Gigliotti teach or suggest each client selecting one of the [created] plurality of client-side ORBs according to a load balancing scheme."

16. Examiner disagrees. Examiner asserts that Gigliotti's client and load balancer are analogous to the client of Applicant's invention. As argued above, the claim limitations allow the client to be implemented using one or more computer systems. Therefore, the load balancer in Gigliotti acts on behalf of the client host in determining which of the client-side ORBs to utilize when determining which server is least utilized, and thus makes a selection on a connection to the determined server.

17. Applicant argues on page 7:

"Nowhere in the above, or elsewhere, does Gigliotti describe anything like what is recited in claim 1. Nowhere does Gigliotti teach or suggest each client on a client computer system creating a plurality of client-side ORBs, wherein each client-side ORB is coupled to a server-side ORB of a different one of the plurality of application server instances, and nowhere does Gigliotti teach or suggest each client selecting one of the created plurality of client-side ORBs according to a load balancing scheme."

18. Examiner disagrees. Gigliotti teaches all the limitations of claim 1 for the reasons given above and given in Final Rejection mailed 11/09/2007.

19. Applicant argues on page 8:

20. "In the Action mailed November 9, 2007, in response to the above arguments, the Examiner asserts "The client object coupled to the load balancer of Gigliotti is equivalent to the client as claimed by Applicant since the load balancer components are part of Client 42." The Examiner's assertion is not supported by the actual teachings of Gigliotti. Gigliotti states that the "load balancers" are part of a "client side", not of the client itself."

21. Examiner disagrees. Applicant's claim language does not preclude the possibility of a load balancer being coupled to a client. Also as indicated above, the claim limitations allow the client to be implemented using one or more computer systems.

22. Applicant argues on page 8:

"From Fig. 4 of Gigliotti and the description thereof as previously cited, it is clear that the load balancer described by Gigliotti resides on a host machine that is clearly distinct and different from and located separately from the "client objects" as illustrated in Fig. 3. Furthermore, even in Fig. 3, it is clear that the "client objects" and the "load balancers" of Gigliotti are different and distinct objects. The fact that Gigliotti logically segregates the "load balancers" into a logical (not physical) "client side" does not make Gigliotti's load balancers part of an actual client of an applications server as is recited in claim 1."

23. Examiner disagrees. Examiner asserts that Gigliotti's client and load balancer are analogous to the client of Applicant's invention. As argued above, the claim limitations allow the client to be implemented using one or more computer systems. Furthermore, Applicant's claim language does not preclude the possibility of a load balancer being coupled to a client.

24. Applicant argues on page 8:

"In Gigliotti's system "[t]he client publishes an event which is received by only one of the plurality of load balancers." The separate load balancer on the host would then select a server instance from among a plurality of server instances. In other words, Gigliotti's system using ORBs, a server-side ORB would be selected by a load balancer on the host in response to an event generated by a client. However, even if a "client" in Gigliotti's system has more than one client-side ORB, Gigliotti's system does not select from among a plurality of client-side ORBs to do load balancing. To the contrary, in Gigliotti's system, a load balancer on the host selects among a plurality of server-side ORBs corresponding to the server instances. The selected server-side ORB would then communicate with the client-side ORB associated with the client."

25. Examiner disagrees. Using Applicant's own reasoning, when choosing a server among the plurality of server instances, it is implied that one of the plurality of client-side ORBs is selected according to a load balancing scheme even if such a selection is performed indirectly by selection of a server and the connection to the server.

26. Applicant argues on pages 9-10:

"In the Action mailed November 9, 2007, in response to the above argument, the Examiner asserts (emphasis added) "At some point, Gigliotti's invention must create a plurality of client-side ORBs in order to communicate with the servers. Fig. 3 clearly indicates that each client can be coupled to a single load balancer which is then coupled to each of the servers. Gigliotti's invention [the load balancer, not the client object] also must select one of the plurality of client-side ORBs according to a load balancing scheme in response to a request to access the application server." The Examiner simply describes what the Applicants have pointed out: Gigliotti teaches a client generating

an event, a load balancer receiving the event, and in response to the event, the load balancer selecting from among a plurality of ORBs. Gigliotti does not teach or suggest each client creating a plurality of client-side Object Request Brokers (ORBs), wherein each client-side ORB is coupled to a server-side ORB of a different one of the plurality of application server instances, and selecting one of the plurality of client-side ORBs according to a load balancing scheme in response to a request to access the application server, as is recited in claim 1. And the Examiner's own interpretation of Gigliotti only serves to highlight this distinction."

27. Examiner disagrees. Examiner asserts that Gigliotti's client and load balancer are analogous to the client of Applicant's invention. As argued above, the claim limitations allow the client to be implemented using one or more computer systems. Under the broadest reasonable interpretation, Gigliotti's load balancer is part of the client-side portion of the system, and allows for Examiner's interpretation as outlined by Applicant above.